

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DARRYL T. COGGINS, :
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Plaintiff, : 07-CV-3624 (JFB) (AKT)
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V. : August 24, 2012
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COUNTY OF NASSAU, et al., :
:
:
Defendant. :
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TRANSCRIPT OF CIVIL CAUSE FOR CONFERENCE
BEFORE THE HONORABLE JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: VALERIE M. CARTRIGHT, ESQ.

For the Defendant: DIANE C. PETILLO, ESQ.
LAURENCE J. WEINGARD, ESQ.
MITCHELL F. SENFT, ESQ.

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1 THE CLERK: Calling case 07-CV-3624, Coggins
2 v. County of Nassau.

3 Counsel, please state your appearance for
4 the record.

5 MS. CARTRIGHT: Good morning, your Honor.
6 Valerie Cartright from the law office of Frederick K.
7 Brewington, representing the plaintiff in this matter.

8 THE COURT: Good morning, Ms. Cartright.

9 MS. PETILLO: Good morning. This is Diane
10 C. Petillo, representing the Nassau County defendants,
11 which is defendants Vara, DeLargi (ph) and Pickering,
12 with respect to this matter, your Honor.

13 THE COURT: Good morning.

14 MS. PETILLO: Good morning, your Honor.

15 MR. WEINGARD: Your Honor, this is Laurence
16 Jeffrey Weingard, representing the defendant Buonora.
17 I have with me my associate, Mitchell Senft.

18 THE COURT: Okay.

19 MR. SENFT: Good morning, your Honor.

20 THE COURT: Good morning, gentlemen.

21 As you know, I scheduled this conference to
22 address -- there's a couple of issues pending. First,
23 there's an appeal of Judge Tomlinson's ruling with
24 respect to the grand jury materials and her
25 unwillingness to stay discovery pending another summary

1 judgment motion. Then obviously, this is, I guess,
2 also a pre-motion conference with respect to a proposed
3 summary judgment motion on the issue of immunity, in
4 light of the Supreme Court decision in Reburg (ph). I
5 think I want to take up that issue first. I think it
6 will inform some of the other issues that we have to
7 address.

8 I did want to have a brief discussion about
9 that because I obviously read the letters. I went back
10 and I read the transcript of the proceeding before
11 Judge Tomlinson. I guess I wanted Ms. Petillo and Mr.
12 Weingard -- the bottom line is, I'm not going to
13 prevent you from making the motion again. We'll talk
14 about discovery in a moment. But under the rules, if
15 you want to make the motion, you can.

16 Obviously, I ruled previously that it was
17 premature under the circumstances and given the
18 allegations, but I understand that there is obviously a
19 significant development in the case law. The issue is
20 that I want you to focus on, and I don't know if you've
21 given this any thought but it was highlighted in Ms.
22 Cartright's July 13th letter, and I have obviously read
23 the Reburg decision.

24 Certainly a lot of the law that I cited, the
25 Second Circuit law in that decision, is no longer

1 applicable pursuant to that decision, the Reburg
2 decision, because it's clear that anything that
3 happened in the grand jury in terms of perjured
4 testimony, any conspiracy with respect to perjured
5 testimony, the whole extra-judicial conspiracy concept
6 is essentially gone, as well as the idea of complaining
7 witnesses in connection with that type of testimony. I
8 think all the law on that obviously has changed as a
9 result of the Reburg decision.

10 However, as Ms. Cartright points out in her
11 papers, in a letter, the allegations in the complaint
12 -- and I went back and looked at the complaint -- go
13 well beyond simply that defendants Buonora and Vara
14 testified in the grand jury and perjured themselves in
15 the grand jury. Obviously, any malicious prosecution
16 claim or other claim that's in any way based upon that
17 would now clearly fail, I think, under Reburg.

18 But they allege other conduct that is
19 unconnected to the grand jury. Obviously, there was an
20 arrest months prior to the grand jury proceeding. They
21 allege that both defendants were involved in
22 instigating and encouraging -- involved in that arrest
23 itself. With respect to Vara, in paragraph 38, it's
24 alleged that Vara submitted a false official report in
25 October of 2004 with respect to what had occurred.

1 Reburg is clear -- there's actually a
2 footnote, footnote one, I think it was, that that
3 decision does not -- alleged actions outside the grand
4 jury context that are unrelated to the grand jury
5 testimony or even I think any prep for the grand jury
6 testimony would also be immune. But to the extent that
7 defendant Vara filed a false report in October --
8 actually, it makes reference to filing a false
9 affidavit as one of the things that would obviously not
10 be immune in the Reburg decision.

11 But to the extent here there's an allegation
12 of a false report filed by Vara that both of them were
13 involved in, and it's instigating and encouraging the
14 arrest itself, which occurred months before the
15 indictment, I don't understand how you're going to
16 argue that Reburg should apply to that alleged conduct.
17 That's really, I think, what the issue will be. I just
18 was curious whether you thought of that and what your
19 response to that would be.

20 Mr. Weingard, do you want to go first?

21 MR. WEINGARD: Yes, please. I have thought
22 about that. I've thought about it a lot, and I still
23 think that Reburg controls because at the end of the
24 day, anytime you seek to use the testimony of a witness
25 before the grand jury in order to substantiate part of

1 your claim, not necessarily all of it but part of your
2 claim, that would be covered completely, in my view, by
3 Reburg. I don't believe that that can serve in any way
4 to justify the types of claims that the plaintiff is
5 making.

6 Also, if you take a look at Reburg, it's not
7 just the testimony before the grand jury. I know
8 you've identified the conspiracy issues. It would seem
9 to me that this would be part of the penumbra of all of
10 the conspiracy allegations that they're claiming
11 occurred. You know of course we've denied a lot of
12 that. I understand your prior decision.

13 And if you also look at the documents that
14 were attached to our prior motion, which included our
15 56.1 Local Rule affidavit, and also the 56(f) affidavit
16 put in by the parties, there is nothing that the
17 parties have -- I'm sorry, that the plaintiff has said
18 which is in any way refutation of anything that we are
19 saying.

20 I do not understand how this would not
21 violate Reburg's proscription to the courts that you
22 can't do indirectly that which you couldn't do
23 directly. You can't come through the back door. And
24 it would seem to me that that's this case.

25 Obviously, any pending claims would have to

1 be dismissed. The malicious prosecution claim would
2 have to be dismissed. I don't believe that there is
3 anything left after you take a look at the 56(f) and
4 our Local Rule 56.1 affidavits. There are no disputes
5 that are alleged.

6 So to allow discovery, for example, to go
7 forward or to allow this case to go forward in the face
8 of absolutely nothing but bald-faced allegations
9 contained in the complaint, in my view, would both
10 violate general procedures but specifically would also
11 impact on the holding in Reburg.

12 I think Reburg is significantly broader as
13 it relates to a claim exactly like this, where the
14 kitchen sink is placed into the complaint and the
15 parties cannot show any basis upon which -- I'm sorry,
16 I said the parties again. The plaintiff cannot show
17 any basis upon which there's anything other than
18 assumptions or surmise or whatever you want to call it.
19 I believe that that's part of what we're saying here.
20 Reburg has, for all intents and purposes, eviscerated
21 any claims that the plaintiff may have concerning these
22 secondary issues.

23 THE COURT: But that's only true with
24 respect to a malicious prosecution claim and what
25 happened in the grand jury. I don't understand how you

1 could even argue that Reburg would have any application
2 to an individual -- to Mr. Coggins' and your client's
3 potential involvement in encouraging that arrest in
4 some way, or in the period between his arrest and his
5 indictment, in terms of any of his involvement in
6 concealing or otherwise being involved in the fact that
7 he was falsely charged in October of 2004 with criminal
8 possession of a weapon. What would Reburg -- Reburg
9 doesn't speak to that.

10 MR. WEINGARD: Well, if I may. First of
11 all, our position is radically different than Vara's
12 position. Whatever Vara may have done in either filing
13 an affidavit or something of that nature, we had
14 nothing to do with. My client, as you will undoubtedly
15 recall, was an assistant officer called to the scene
16 after the arrest was effectuated.

17 The only participation he had was to try to
18 assist Vara when Coggins ran away. And then he came
19 back to the car and yes, he did not find the gun, a
20 Floral Park officer found the gun and a magazine. But
21 my client was not involved in anything other than that
22 on-the-scene event.

23 For example, Officer Vara had sought a
24 commendation on the grounds that he found the gun. My
25 client never did any such thing. There were no written

1 reports prepared by Buonora whatsoever. He did
2 absolutely nothing other than the assistance at the
3 scene. He was sent home by a supervisory officer at
4 about 4:50 that morning, and he next -- his next and
5 only involvement was to show up at the grand jury to
6 testify.

7 THE COURT: That's all fantastic if that in
8 fact is what the record shows, but that goes back to my
9 -- that's great for your client in terms of Reburg if
10 that's ultimately what the facts in the case show.

11 But as you might be aware, when they allege
12 not that but a much broader involvement by your client
13 in activities prior to the -- including the involvement
14 in the arrest, and they could also proceed on a failure
15 to intervene theory with respect to that arrest. Even
16 if he wasn't personally involved in it, if he was aware
17 of unconstitutional activities related to it and failed
18 to intervene, they could proceed on that theory with
19 respect to a false arrest.

20 And your client -- in order for you to make
21 a summary judgment motion and argue what you just said
22 to me, which is, my client, from the night of what
23 transpired to the moment he appeared in the grand jury,
24 he had absolutely no involvement whatsoever in the
25 case, how are you going to make a motion for summary

1 judgment on that when Ms. Cartright would say, we
2 didn't get a chance to -- we allege otherwise and we
3 didn't get a chance to depose your client and ask him
4 under oath, were you involved in this, were you
5 involved in that, what was your knowledge of this, what
6 was your knowledge of that? That's what they're
7 entitled to before you move for summary judgment. That
8 was the whole point of my decision four years ago.

9 MR. WEINGARD: Judge, there is a point that
10 I wish to make, which is that they had to file a 56(f)
11 affidavit. Your Honor, in deciding the last motion,
12 pointed out there were four paragraphs related to that
13 56(f) affidavit, which you thought allowed them to
14 proceed forward.

15 I understand what your Honor said, believe
16 me I do, but if you take a look at it and allow us to
17 argue that and deal with that 56(f) affidavit, you will
18 see that there is absolutely not a scintilla of
19 evidence which suggests that any of the claims other
20 than the perjury claim, which is out of the case, was
21 in any way substantiated by fact.

22 The only fact that they could prove was that
23 my client committed perjury before grand jury. Nothing
24 else, none of the requirements under the 56(f) were
25 actually met, not a single one. They say -- for

1 example, I'll take a look at --

2 THE COURT: They could file another
3 affidavit that focuses on, in light of Reburg, some of
4 the things that I just discussed with you. Why
5 couldn't they file another 56(f) affidavit that says,
6 we can't --

7 MR. WEINGARD: If --

8 THE COURT: Let me finish.

9 MR. WEINGARD: Sure, of course.

10 THE COURT: We can't oppose the motion at
11 this point because we want to ask defendant Buonora,
12 was he involved in their client being arrested? What
13 was his knowledge of defendant Vara's alleged false
14 report in October? Did he fail to intervene in
15 connection with the arrest or the false report? Why
16 wouldn't they be entitled to put in another 56(f)? You
17 want to focus on the one that they were filing before
18 Reburg but in light of Reburg, they're permitted to
19 say, this is now going to be our focus.

20 MR. WEINGARD: Yeah, I do understand that
21 thought but the case law in the Second Circuit is very
22 clear that they can't operate on what their hope is as
23 to what anybody would say or speculation or surmise.
24 They have to have done their homework before discovery.
25 They have to have done whatever it is they could have

1 done to establish that they have a valid basis for so
2 claiming.

3 If they can do that, then perhaps an issue
4 is drawn which requires some sort of discovery. But
5 otherwise, it's just hope, surmise, conjecture, and
6 they cannot get away with that. The simple fact is, to
7 deny the absolute immunity claims in this case on that
8 type of thin affidavit would cause tremendous problems
9 in connection with absolute immunity. It would
10 literally defeat -- it would literally defeat Reburg.

11 Look, we all know that in virtually every
12 1983 claim, there are these types of allegations.
13 They're considered boiler plate. And unless they're
14 backed up by something else, you can't drag a guy in to
15 defend. It violates the immunity from suits and
16 certainly the defense.

17 And what they're asking you to do, I
18 believe, is to say, look at our complaint, this is what
19 the complaint says. Forget about our 56(f), forget
20 about anything else we may have done to properly
21 investigate this case, and just to deny summary
22 judgment. I don't believe that that's the standard of
23 the law, certainly not after Reburg. Whatever it may
24 have been before, it's not the state of the law after
25 Reburg, in my view.

1 THE COURT: Okay. Ms. Cartright --

2 Ms. Petillo, is there anything else you want
3 to add on this issue?

4 MS. PETILLO: I believe Attorney Weingard
5 has pretty much covered it all.

6 THE COURT: Okay. I would just point out
7 that on this issue, I obviously mentioned defendant
8 Vara and I think in addition to the issues that I've
9 raised with respect to defendant Buonora that I think
10 apply to both defendants, paragraph 38 creates an
11 additional problem for defendant Vara, I think, in
12 terms of, again, moving for summary judgment based upon
13 Reburg because there is this allegation of a false
14 report that was filed in October of 2004, months before
15 the grand jury testimony and indictment. So, again, I
16 don't think Reburg provides any type of immunity to
17 that type of activity. Ms. Petillo?

18 MS. PETILLO: Yes, your Honor. We would ask
19 at this point that we be given the opportunity to make
20 the motion and to flesh out these issues, and then for
21 the Court to determine it at that point.

22 THE COURT: Okay. Ms. Cartright, do you
23 want to respond?

24 MS. CARTRIGHT: Yes, your Honor.

25 As stated in the letter and as we argued

1 years ago with respect to the other summary judgment
2 motion that was filed by Mr. Buonora's counsel, we
3 believe that the summary judgment motion would be
4 premature at this time.

5 We do understand that given Reburg, there
6 are some serious concerns related to any allegations
7 that we made solely based on the grand jury testimony.
8 However, there are other -- and as indicated by your
9 Honor, based on our letter, we've made allegations to
10 things at the beginning of the arrest up until the time
11 of the grand jury presentation. They're clearly
12 alleging that there was probable cause that was
13 established before the grand jury proceeding.

14 So we believe Reburg, contrary to what Mr.
15 Weingard has stated, does not stand for the proposition
16 that it is an all-purpose shield against malicious
17 prosecution claims at all. We are not basing our
18 malicious prosecution claim solely on the grand jury
19 presentation. In fact, there is a wide array of facts,
20 at least that we believe are facts, that would support
21 our false arrest, malicious prosecution and other
22 claims under the Fourth Amendment.

23 Now, with respect to the information that we
24 have on hand, we have not yet deposed Mr. Buonora as it
25 relates to any of the claims here. So whatever we've

1 included -- and I don't have any affidavits or any of
2 the documentation related to the prior summary judgment
3 motion in front of me. However, we have clearly
4 indicated all that we knew based on the investigation
5 that we did up until that point. We believe that after
6 deposing the defendants in this case and some of the
7 other witnesses, we will have the additional
8 information to defeat any type of summary judgment
9 motion.

10 I wanted to call your attention, also, your
11 Honor, to a decision that was rendered July 18th, 2012
12 in the Eastern District. And I understand that it is
13 not something that is binding on your Honor but it
14 should be persuasive. It's Sankar, S-a-n-k-a-r.

15 THE COURT: Yeah, I read that one, Judge
16 Dearie's decision, right?

17 MS. CARTRIGHT: Yes.

18 THE COURT: Right. I'm aware of that.

19 MS. CARTRIGHT: In that decision, it's very
20 clear -- it's made very clear that Reburg does not
21 alter the control of Second Circuit and New York law
22 that the filing of a sworn complaint is sufficient to
23 satisfy the initiation prong of a malicious prosecution
24 claim. Based on our complaint, we are claiming that
25 both Vara and Buonora instigated the arrest and were

1 players, were key players with respect to prosecuting
2 this case.

3 I understand that the defendants may have
4 some viable claims -- I'm not refuting that with
5 respect to the grand jury testimony, as far as absolute
6 immunity. However, I think that this is something that
7 should be held off until after discovery is completed,
8 and the defendants can make their argument based on
9 Reburg at the normal course, after discovery, for
10 summary judgment.

11 MR. WEINGARD: Judge, the entire concept
12 that I discussed a moment ago relates to how you get to
13 summary judgment when you have an absolute immunity or
14 any other claim. The whole purpose of 56(f) is to put
15 in materials that are factual on the part of the
16 plaintiff, so that when we say there are no issues of
17 fact except my client perjured himself before the grand
18 jury, which is a conceded fact by everybody here --

19 THE COURT: Say that -- what's the conceded
20 fact by everybody? Say that again.

21 MR. WEINGARD: That my client perjured
22 himself before the grand jury.

23 THE COURT: Okay, go ahead.

24 MR. WEINGARD: There's no doubt about that,
25 but that's not what I'm talking about. What I'm saying

1 to you now is that in order to get to the point where
2 you allow the plaintiff to conduct discovery in the
3 face of an absolute immunity objection, which seems to
4 vibrate through Reburg, at least they have to put in
5 actual facts, not conjecture, not surmise. The Circuit
6 is clear on it. They have to factually make
7 allegations.

8 For example, they make an allegation that
9 Vara signed the complaint. That's a valid allegation,
10 or signed an affidavit. That's a valid allegation. No
11 such thing can be said of my client, except to surmise
12 it or conjecture it. They've had years within which to
13 get records from the police department in Nassau
14 County. They have had discovery. There's nothing here
15 but that Buonora showed up at the scene and then
16 Buonora went home and Buonora showed up at the grand
17 jury.

18 That's this case as it relates to Buonora,
19 not as it relates to Vara. As I told you, Vara did
20 request a commendation for finding this guy. My client
21 didn't. My client didn't do anything except show up at
22 two locations, one of which was the crime scene and the
23 other of which was the grand jury. That's it. That's
24 what he did.

25 I don't believe that's speculation on my

1 part. We've made those allegations in our 56.1 Local
2 Rule document. There's been no refutation of any of
3 this in the 56(f)'s. We don't see anything that would
4 permit this case to go beyond -- let me say it a
5 different way.

6 We don't see anything which would require
7 this Court to deny an absolute immunity defense and
8 dismiss this suit so that my client does not have to
9 endure the costs and the other associated stuff that
10 relates to defense.

11 THE COURT: Well, I --

12 MR. WEINGARD: Otherwise, why is it absolute
13 immunity from suit.

14 THE COURT: Well, the absolute immunity is
15 to protect officers from the activities in the grand
16 jury process. But there is -- obviously, there's
17 qualified immunity for other types of situations,
18 including false arrest claims. But you're alleging
19 that he had nothing to do during this other time
20 period. They're alleging otherwise.

21 You're saying it's only based on speculation
22 but, obviously, they get the benefit of inferences from
23 the record as well, reasonable inferences that could be
24 drawn from the allegations. And you want me to
25 basically cut off this suit without allowing them to

1 depose your client, to have him state under oath what
2 you just stated, which is that he had zero to do and he
3 wasn't aware of any unconstitutional activity by Vara
4 with respect to the arrest or any other false reports
5 that were being filed during the months between the
6 arrest and the grand jury.

7 You want me to cut the suit off and not
8 allow them to question your client under oath, to
9 question him regarding whether what you're saying is
10 true or not, and that's --

11 MR. WEINGARD: I believe that's what -- I'm
12 sorry, Judge.

13 THE COURT: That, to me, would be quite
14 extraordinary to do. Reburg does not say that when you
15 have an officer who, in addition to -- it's undisputed
16 he perjured himself in the grand jury, is alleged to
17 have been involved in the arrest and the detention of
18 the plaintiff for a period of time well prior to the
19 indictment, not based upon the indictment, that he
20 doesn't have to face -- he gets absolute immunity for
21 that.

22 There's no cases that suggest that, there's
23 no possible reading, no possible reading of Reburg that
24 would suggest that. To me, I can't even believe we're
25 talking about that. Your only response to that is that

1 their allegation that he was involved in these
2 activities prior to the indictment or failed to
3 intervene in the unconstitutional acts of Vara prior to
4 the indictment, you're saying is speculation, that they
5 have to come forward with facts, but that's not the way
6 it works. If they make those allegations, then they're
7 entitled to discovery on those allegations, and then
8 you make a motion for summary judgment.

9 If there were no allegations at all that
10 your client did anything other than appear in the grand
11 jury, then we would be having a different conversation.
12 Then all my questions would be to Ms. Cartright. Ms.
13 Cartright, your only allegation here is what he did in
14 the grand jury; you're going to lose under Reburg, but
15 that's not what their complaint is.

16 Their complaint is that he was involved in
17 what happened at the scene, he was involved in the
18 arrest and in the detention prior to the grand jury.
19 Your only response to that is, they're not going to be
20 able to prove that, they don't have any facts to back
21 that up.

22 But they make the allegation and then
23 they're permitted to have discovery in order -- before
24 they have to respond to a summary judgment motion.
25 That's what I ruled in 2008 and although the analysis

1 has changed with respect to the grand jury aspect of
2 the case, the analysis hasn't changed with respect to
3 the arrest and what transpired well before the grand
4 jury indictment.

5 So that's really -- we can go in circles on
6 this all morning. I understand your position but I'm
7 hoping you understand what -- if you're going to make
8 the motion --

9 MR. WEINGARD: Believe me, I understand
10 exactly what you're saying, Judge.

11 THE COURT: Okay, so then I think --

12 MR. WEINGARD: I understand exactly what
13 you're saying. Believe me, I don't have my head tucked
14 under my wing. I want you to just understand one
15 thing: Based on what they're saying now, everything
16 they're claiming, since my client is not a complaining
17 witness, since he did not sign any sort of affidavit,
18 since he didn't do anything of that nature, and they
19 have that information, what you're actually saying is
20 that Reburg's analysis about extra-judicial
21 conspiracies was either incomplete or wrong.

22 They say you can't go back before the grand
23 jury and get through the back door that which you
24 couldn't get through the front. You can't have an
25 extra-judicial conspiracy here, because if you do, he's

1 still absolutely immune.

2 THE COURT: I know, but that, again, applies
3 to perjury in the grand jury.

4 MR. WEINGARD: I don't believe that's --

5 THE COURT: They're saying that if you can't
6 bring a suit against the officer for his perjury in the
7 grand jury, you can't back-door it by saying, well, he
8 was in a conspiracy with other officers to commit
9 perjury. That's what they say. The idea that there
10 are no conspiracies whatsoever and that can't be a
11 conspiracy with respect to a false arrest or a false
12 detention independent of the grand jury, I mean, that's
13 crazy, in my view. It's absolutely crazy to pull that
14 from Reburg.

15 Reburg is talking about the grand jury and
16 conspiracies that are allegedly arising from testimony
17 in the grand jury. It speaks zero and there's no logic
18 that could argue that it should be extended to an
19 arrest. It just -- that has nothing to do with the
20 grand jury. It deals with grand jury -- it's nothing
21 to do with a false arrest claim or a false detention
22 claim unrelated months prior to the grand jury. You
23 can argue that but I don't know what that would be
24 based on.

25 MR. WEINGARD: Judge, there's a quote

1 directly in Reburg, and you'll forgive me, I'm working
2 off a West Law page. It's on page 9 of Reburg and it
3 says: "In addition, as the Court of Appeals held, the
4 rule may not be circumvented by claiming that a grand
5 jury witness conspired to present false testimony or by
6 using evidence of the witness' testimony to support any
7 other 1983 claim concerning the initiation or the
8 maintenance of the prosecution."

9 So I don't think I'm crazy. I think that's
10 what it says. At least that's what it says to me.

11 THE COURT: But, again -- I read that line
12 but that all has to do with the grand jury and the
13 indictment. They're talking about the initiation and
14 the prosecution in terms of the indictment. They're
15 not talking about the arrest.

16 MR. WEINGARD: They're saying the initiation
17 or maintenance of the -- of a prosecution, which I
18 assume starts from the time of arrest.

19 THE COURT: Okay, but that would only apply
20 to the use of the grand jury testimony itself. It
21 doesn't apply to other things that would go to a false
22 arrest and other evidence that might prove a false
23 arrest claim independent of what happened in the grand
24 jury. It has nothing to do with that, and that's what
25 they're arguing here. They're arguing here that in

1 addition to perjuring himself in the grand jury, that
2 he was involved long before the grand jury in allowing
3 the plaintiff -- encouraging, instigating and
4 potentially failing to intervene in the
5 unconstitutional acts of others with respect to the
6 arrest.

7 MR. WEINGARD: By using evidence of -- I'm
8 quoting, obviously. "Or by using evidence of the
9 witness' testimony to support any other 1983 claim
10 concerning the initiation or maintenance of a
11 prosecution."

12 I don't think that's crazy. You'll forgive
13 me, I honestly don't think that my reading of that is
14 crazy. I may be wrong but crazy, I'm not.

15 THE COURT: I don't want to keep going
16 around on this.

17 MR. WEINGARD: Okay. Allow me --

18 THE COURT: You could put his testimony
19 completely aside and they could still have a false
20 arrest claim against him, if they can prove that he was
21 involved in the arrest or detention of him months
22 before the grand jury. They don't have to use his
23 grand jury testimony, they don't have to refer to the
24 grand jury. They would have a claim and they could
25 recover damages for that, completely apart from the

1 grand jury. They don't have to even reference that
2 there was a grand jury and they could win that case, if
3 they can prove that --

4 MR. WEINGARD: (Ui) any extra-judicial
5 conspiracy, which takes place purportedly in every
6 case, certainly in the cases that the Second Circuit
7 had to deal with when they thought it was appropriate
8 to do so. How does that differ from any other extra-
9 judicial conspiracy? That's what I'm saying. It's
10 exactly the same thing.

11 THE COURT: So your argument is -- let me
12 just flip your argument around. Your argument is that
13 if an officer testifies in the grand jury, falsely or
14 otherwise, let's say falsely, then no conspiracy claims
15 can be brought because he's now under Reburg. He
16 testified in the grand jury, testified falsely. Now
17 he's got the Reburg umbrella that protects him from any
18 potential claim of false arrest that occurred months
19 before the grand jury or any type of unconstitutional
20 conduct because he testified falsely in the grand jury
21 about it. That's essentially what you're telling me.

22 MR. WEINGARD: Because this is in essence no
23 different from any other pre-grand jury testimony which
24 constitutes an extra-judicial conspiracy, which (ui) I
25 believe throughout.

1 THE COURT: Well, that's not -- if their
2 argument was that he met with the prosecutor before
3 testifying and gave false statements to the prosecutor,
4 that's different. That, I agree, would be covered by
5 Reburg. But this is an arrest that occurred months
6 before the grand jury.

7 But I think we've spent enough on this. As
8 I said, you can make the motion but I just wanted to
9 focus you on what I think the relevant issues would be.
10 So that's the first issue.

11 The second issue is in terms of the --

12 MR. WEINGARD: I think somebody was just
13 trying to --

14 MR. SENFT: Judge, I just want to point out
15 that there's been extensive paper discovery from the
16 County. All the records except -- we'll get to it in a
17 second, I think. All the records, except for part of
18 the grand jury testimonies, were provided by the
19 County, demonstrating what was going on from the time
20 of incident up to that point. So there is some
21 documentation.

22 THE COURT: There is -- there is
23 documentation of what went on between the arrest and
24 the indictment? Is that what you're saying?

25 MR. SENFT: Correct. The County has

1 produced literally hundreds of pages of records.

2 THE COURT: Okay, but that doesn't -- that
3 doesn't talk about what conversations there were. That
4 obviously is what depositions are for. In a normal
5 case, they're entitled to ask defendant Buonora, did
6 you speak to any officers before they arrested Mr.
7 Coggins? Were you aware that Vara was filing a false
8 report in October of whatever year it was? You know,
9 those may not be documented in paperwork from the
10 County. That's why they're entitled to have
11 depositions on that issue.

12 If after those depositions, there's no
13 evidence that would support any involvement by
14 defendant Buonora, then it's a different argument and a
15 different situation than we have here now, where Ms.
16 Cartright is saying, I haven't gotten to depose him
17 regarding his involvement. We allege that he was
18 involved in the arrest and the unconstitutional acts
19 that preceded the indictment and we haven't had a
20 chance to question him. That's the bottom line.

21 But I think we've spent enough time on this.
22 I want to move to the issue of a stay of discovery,
23 which is the subject of part, I guess, of the appeal of
24 Judge Tomlinson's ruling. It is my view that discovery
25 should not be stayed pending this renewed motion, and

1 there are a couple of reasons for that:

2 First, the first reason is based upon the
3 discussion that we just had. Notwithstanding the fact
4 that the renewed motion is going to be made based upon
5 Reburg, I believe based upon my long involvement in
6 this case, including having gone back and reviewed the
7 complaint, read Reburg, that there is a substantial
8 portion of this case that is unrelated to the grand
9 jury and that the renewed motion, at least before
10 discovery is complete, is going to have a difficult
11 time addressing, if the plaintiff files another
12 declaration that again points out why they need these
13 depositions to occur.

14 I understand there is the potential
15 additional costs and expense of discovery if the
16 defendant were ultimately to prevail on this renewed
17 motion, but I have to balance that out versus what I
18 just said about my view of the likelihood of success of
19 that motion, in light of my reading of the cases, as
20 well as the fact that this is a 2007 case. This case
21 has been pending for five years and I'm unwilling to
22 have any additional delays in this case while yet
23 another motion is being made.

24 Judge Tomlinson pointed out, and I think
25 it's accurate, that even if he were dismissed as a

1 party, his deposition would be taken, for obvious
2 reasons, in connection with this case. I understand
3 Mr. Weingard's argument that, well, maybe he wouldn't
4 have counsel present and it would be less expensive,
5 and I understand that argument.

6 But, again, I have to balance out all of the
7 factors, including what I view as the likelihood of
8 success of the renewed motion, without the completion
9 of discovery and with the fact that this case is five
10 years old and was delayed significantly by the first
11 motion, when discovery was stayed for a long period of
12 time. So I'm not going to overrule Judge Tomlinson's
13 ruling with respect to the discovery going forward.

14 And on the grand jury materials, again, I'm
15 adhering to Judge Tomlinson's ruling. I read the
16 transcript. She accurately cited the law in terms of a
17 particularized need being shown. She correctly pointed
18 out that several -- obviously, defendant Buonora's
19 testimony and Vara and Coggins, I think, were the three
20 who were provided, and there has not been a
21 particularized needed shown with respect to the other
22 witnesses in this case who testified in the grand jury,
23 at least at this point.

24 Obviously, that can be renewed at some
25 future time. But essentially, what has been argued by

1 the parties here, including plaintiff, is that for
2 impeachment purposes, to develop I guess the absolute
3 immunity issue for purposes of a summary judgment
4 motion after discovery is complete. I don't believe
5 that those reasons are sufficient to demonstrate a
6 particularized need at this point.

7 In fact, I think it runs contrary to
8 everything that Mr. Weingard just said to me regarding
9 his renewed motion under Reburg. In other words, if in
10 fact Reburg is as it states it is, then that other
11 grand jury material would be completely useless in
12 terms of the application of Reburg.

13 And even in what the Court has said
14 regarding the fact that discovery may need to go
15 forward on Buonora in terms of his deposition, again,
16 if the discovery bears out that he had no involvement
17 and no knowledge of the unconstitutional acts of other
18 officers where he could intervene from the date of the
19 incident to the time he went in the grand jury, then
20 Reburg is going to apply and he certainly would not
21 need any grand jury material to make that argument.
22 The grand jury material, the testimony of others or
23 even himself, for that matter, although he has that
24 already, would be completely immaterial to that. And
25 if I were to order disclosure of that, notwithstanding

1 all the reasons not to do that in terms of grand jury
2 secrecy, I'd be requiring the production of grand jury
3 materials that may ultimately not be necessary, if in
4 fact the facts turn out to be what Mr. Weingard
5 believes they are, because the case at the summary
6 judgment stage, after the completion of discovery,
7 would be dismissed under Reburg.

8 So I adhere to her ruling with respect to
9 that, although I want to make clear that it can be
10 renewed at a subsequent time, if the circumstances
11 should change, okay?

12 MR. WEINGARD: Thank you, your Honor.

13 THE COURT: Okay. Is there anything else,
14 Ms. Cartright?

15 MS. CARTRIGHT: No, nothing else at this
16 time, your Honor. Thank you so much.

17 THE COURT: Okay. Ms. Petillo?

18 MS. PETILLO: Nothing else, your Honor.

19 Just so we're clear, Judge Tomlinson had indicated that
20 depositions had to be completed by September 24th, based
21 on the fact that depositions hadn't been conducted
22 pending the hearing and determination of this
23 particular motion. I was wondering if we could extend
24 that date out because we still have quite a few other
25 individuals that need to be deposed and it's already

1 the end of August, and I know people may have vacation
2 time.

3 THE COURT: I'll speak to Judge Tomlinson
4 about that. I saw that September 24th date. Obviously,
5 part of the problem is that I didn't act on these
6 letters immediately when they were filed in July. So
7 I'm going to ask her -- why don't you speak to all
8 counsel and try to figure out what you think a
9 realistic date would be and write a letter to her,
10 asking for a new deadline. I'm going to tell her that,
11 assuming that that's a reasonable one -- I'm certainly
12 going to ask her to move it. In terms of what is a
13 reasonable date, I'll leave that to her after receiving
14 a letter from you, okay?

15 MS. PETILLO: Very good, your Honor, thank
16 you.

17 THE COURT: And then in terms of the -- Mr.
18 Weingard, do you want me to set a briefing schedule for
19 the renewed motion or do you want to discuss a schedule
20 with everybody and submit me a letter to me with a
21 proposed schedule? What do you want to do?

22 MR. WEINGARD: Is that okay with you, Judge?

23 THE COURT: Yeah.

24 MR. WEINGARD: We'll discuss it first and --

25 THE COURT: And just submit a letter.

1 MR. WEINGARD: -- submit a letter to you.

2 THE COURT: That's fine.

3 MR. WEINGARD: Okay?

4 THE COURT: Okay, thank you. Have a good
5 weekend.

6 MR. WEINGARD: Thank you very much, Judge.

7 MS. PETILLO: Thank you, your Honor.

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18 I certify that the foregoing is a correct
19 transcript from the electronic sound recording of the
20 proceedings in the above-entitled matter.
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25 ELIZABETH BARRON

September 21, 2012